IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORIGINAL SIDE

INCOME TAX APPEAL NO. 436 OF 2002

The Commissioner of Income-tax,
Central-II, Mumbai. Appellant

vs.

M/s.Supreme Industries Ltd. Respondent

Mr. Vijay Kantharia i/b. Mr.H.D. Rathod for the appellant.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ

DATED : 19th August 2004

P.C.

Heard.

2. In the memorandum of appeal, the revenue has proposed three substantial questions of law viz.:

"1. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in upholding the decision of the CIT(A) in which he deleted the additions of Rs.1854867/- made by the Assessing officer to the value of closing stock in respect of A.Y. 1996-97 on account of unavailed MODVAT credit ignoring the fact that the issue is pending for a decision by the Supreme Court?

2. Whether on the facts and in the circumstances of the case in law, the

Hon'ble ITAT was justified in upholding the deletion of disallowance of interest of Rs. 1779109/- paid by the assessee in respect of A.Y. 1996-97 on borrowed funds used for making interest true advance to M/s.Premier Lighting Industries Ltd., ignoring the nexus between the borrowed funds and the "interest free advance made"?

3. Whether on the facts and in the circumstances of the case in law the Hon'ble ITAT was justified in upholding the deletion of disallowance of interest payable on borrowed funds diverted for making interest free advance to M/s. KSPL in respect of A.Y. 1996-97 ignoring the fact that the decision relied upon by the Ld. CIT(A) has no application to the facts of the present case.?"

3. In so far as proposed question no.1 is concerned, the learned counsel for the revenue conceded that the said controversy is concluded by the judgement of the Supreme Court in the case of Commissioner of Income-tax v. Indo Nippon Chemicals Co. Ltd., 261 ITR 275. In this view of the matter the finding of the Tribunal in respect of proposed question no.1 cannot be faulted.

4. As regards proposed question no.2, we find that the Tribunal considered this aspect thus:

" It is noticed that assessee is operating from the premises of PLI without paying any rent. Interest free advance was given in consideration of using the space given by PLI. PLI is not carrying on any manufacturing or other activity over a decade. The amount advanced by the assessee represents nothing but the statutory and administrative expenses of PLI. The premises owned by PLI admeasuring

> approximately 2140 sq.mtrs. at Goregaon, Mumbai, was used by the assessee for its Tool Room, Machinery and R & D Divisions, without any payment of rent to PLI. It was stated that amount of rent payable in the same area for a comparable premises would be much higher than the notional interest on the loan. I have perused the reasoning adduced in the impugned order. I am inclined to agree with the same."

5. We do not find any infirmity in the consideration of the aforesaid aspect by the Tribunal.

6. In so far as the proposed question no.3 is concerned, the Tribunal held that the loan free interest to KSPL was made out of the available funds and not out of borrowed funds. This is a question of fact. It is not in dispute that KSPL was promoted by the appellant-assessee.

7. No substantial question of law arises.

8. Appeal is dismissed in limine.

(R.M. LODHA, J.)

(J.P. DEVADHAR,J.)